substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–3

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 51–3 and 51–4 of title 41, chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 51–3 and 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–3—CENTRAL NONPROFIT AGENCIES

2. Section 51–3.2 is amended by revising paragraph (m) to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(m) Review and forward to the Committee by December 1 of each year a completed original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

* * * * *

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 51–4.3 Maintaining qualification.

(a) * * * In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification (Committee Form 403 or 404) covering the fiscal year ending the preceding September 30.

* * * * *

Dated: July 28, 2003.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–19630 Filed 7–31–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 030721180–3180–01; I.D. 010903D]

RIN 0648–AQ95

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of availability of draft Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Amendment 1); request for comments.

SUMMARY: This proposed rule and Amendment 1 are necessary to ensure that shark regulations are based on the results of the 2002 stock assessments for large coastal sharks (LCS) and small coastal sharks (SCS). The results of these stock assessments indicate that the LCS complex continues to be overfished, and overfishing is occurring; that sandbar sharks are not overfished, but overfishing is occurring; that blacktip sharks are rebuilt and healthy; that the SCS complex is healthy; and that finetooth sharks are not overfished, but overfishing is occurring. Based on these results, NMFS proposes to revise the rebuilding timeframe for LCS to 27 years from 2004, to change the commercial regulations, to change the recreational regulations, to remove the deepwater/other sharks from the management unit, to establish criteria regarding adding or removing sharks from the prohibited species group, and to establish a display permit for fishermen who wish to harvest sharks only for public display. In Amendment 1, NMFS also proposes updates to essential fish habitat (EFH) identifications for sandbar, blacktip, finetooth, dusky, and nurse sharks.

DATES: Comments must be received no later than 5 p.m. on September 30, 2003.

Section 635.69 is currently stayed. However, NMFS intends to lift the stay and reinstate § 635.69 before the final rule is published.

Public hearings on this proposed rule will be held in August and September 2003. Specific dates and times for the public hearings will be announced in a separate document published in the **Federal Register**.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species (HMS) Management Division (SF/1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). For copies of the Draft Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DEIS/RIR/IRFA), contact Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Heather Stirratt, or Chris Rilling at 301–713–2347 or fax 301–713–1917 or Greg Fairclough at 727–570–5741 or fax 727–570–5656.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, is implemented by regulations at 50 CFR part 635.

Management History

NMFS has managed shark fisheries in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea under an FMP since 1993. Since 1997, management actions have been challenged in several lawsuits from commercial, recreational, and environmental interest groups. In December 2000, the court approved a settlement agreement regarding two lawsuits with the commercial industry. Consistent with the court-approved settlement agreement, among other things, NMFS conducted a non-NMFS

peer review of the 1998 LCS stock assessment, conducted a new LCS stock assessment after considering the results of the peer review, and conducted a non-NMFS peer review of the new LCS stock assessment.

The peer review of the 1998 LCS stock assessment found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were based neither on scientifically reasonable uses of the appropriate fisheries stock assessment techniques nor on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS determined that the 1998 LCS stock assessment was not an appropriate basis for any prior or subsequent rulemaking and that a new stock assessment was needed in order to revise the regulations that were based on the 1998 LCS stock assessment and implemented in the 1999 HMS FMP.

In 2002, NMFS conducted both an SCS stock assessment (67 FR 30879, May 8, 2002) and an LCS stock assessment (67 FR 69180, October 17, 2002). The SCS stock assessment was the first SCS stock assessment since 1992. It found that the SCS complex was not overfished and that overfishing was not occurring. Additionally, it found that Atlantic sharpnose, bonnethead, and blacknose sharks were not overfished and that overfishing was not occurring. It also found that finetooth sharks, while not overfished, are experiencing overfishing.

The 2002 LCS stock assessment found that the LCS complex is still overfished and that overfishing is still occurring. Additionally, it found that sandbar sharks are rebuilt but are still experiencing overfishing and that blacktip sharks are rebuilt and are not experiencing overfishing. The peer reviews of the 2002 LCS stock assessment supported the assessment and concluded that the models and methodology used were appropriate.

On November 15, 2002 (67 FR 69180), NMFS announced its intent to prepare an environmental impact statement and amend the HMS FMP as a result of these two stock assessments. In February and March 2003, NMFS held seven scoping meetings, including one at the Highly Migratory Species (HMS) Advisory Panel meeting, to discuss and collect comments on an Issues and Options Paper (68 FR 31987, January 27, 2003). NMFS received many comments, which were considered to develop the alternatives considered in the pre-DEIS for draft Amendment 1. On April 21, 2003, NMFS released a pre-draft document to the consulting parties (Fishery Management Councils, the commissioners and advisory groups of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the HMS and Billfish Advisory Panels established under the Magnuson-Stevens Act) and subsequently received and considered comments in developing draft amendment 1 and the proposed rule.

At this time, NMFS is not proposing any specific management measures for pelagic sharks. The International Commission for the Conservation of Atlantic Tunas (ICCAT) is planning to conduct a pelagic shark stock assessment for several pelagic sharks in 2004, and NMFS will likely consider specific pelagic sharks measures thereafter. However, to the extent that all shark management is interrelated, it is possible that the management measures proposed here would affect pelagic sharks. For instance, while NMFS is not proposing to change the pelagic shark quota at this time, depending on the results of the 2004 pelagic shark assessment, NMFS may use the same quota basis for setting the pelagic shark quota in the future.

NMFS is also proposing to remove and reserve § 635.16. This section of the regulations pertain only to the issuance of initial limited access permits (ILAPs). At this time, all appeals and lawsuits regarding ILAPs are complete, and the regulations are no longer relevant.

The following is a summary of the preferred alternatives analyzed in the DEIS for Amendment 1 and the revised rebuilding timeframe for LCS. These elements are arranged in the following sections: LCS rebuilding timeframe, commercial management measures, recreational management measures, bycatch reduction measures, and other proposed management measures.

1. LCS Rebuilding Timeframe

In the 1999 HMS FMP, NMFS established separate rebuilding timeframes for ridgeback and non-ridgeback LCS. These rebuilding timeframes, using sandbar and blacktip sharks as proxies for ridgeback and non-ridgeback LCS, respectively, were based on the projections from the 1998 LCS stock assessment. As a result of the peer review of the 1998 LCS stock assessment and the change of status in sandbar and blacktip sharks, NMFS is proposing to revise the timeframe to rebuild LCS. Because the proposed timeframe is based on the results of the 2002 stock assessment regarding the LCS complex, the proposed timeframe would be appropriate for overfished LCS regardless of whether NMFS finalizes the preferred LCS classification alternative, described below, to aggregate the ridgeback and non-ridgeback LCS species groups, or takes no action and maintains the ridgeback/non-ridgeback split.

The 2002 LCS stock assessment found that the LCS complex is overfished and experiencing overfishing. The stock assessment indicated that a zero landings policy would have, on average, a 68–percent chance of rebuilding the LCS complex to maximum sustainable yield (MSY) within 10 years. Thus, even prohibiting fishing for 10 years does not quite give a 70–percent chance of rebuilding the complex to MSY (this is the level of confidence identified in the HMS FMP associated for shark management). Assuming a linear relationship between the results at 10 and 20 years, it appears that the LCS complex has approximately a 70–percent chance of rebuilding to MSY under a zero fishing policy in approximately 11 years. Given the results of the 2002 LCS stock assessment and the requirements of the Magnuson-Stevens Act, NMFS believes that the rebuilding timeframe for the LCS complex should be the amount of time it would take to rebuild under a zero fishing policy plus one mean generation time.

Using the average of the several LCS species, the mean generation time for the LCS complex is approximately 16 years. NMFS used the average generation time of several species instead of picking one species because of the wide biological diversity of sharks and because the stock assessment did not state that there was any one species that was of particular concern.

Thus, the rebuilding timeframe for the LCS complex is as follows: 11 years (time to reach MSY under a zero fishing policy) + 16 years (mean generation time of LCS species) = 27 years. The projections in the 2002 LCS stock assessment indicate that the stock could be rebuilt 27 years from 2002, which is within the same time period projected under the 1999 HMS FMP. If the measures proposed in this action are implemented in 2004, the LCS complex would still have approximately a 70–percent chance of rebuilding within 27 years based on the stock assessment projections.

2. Proposed Commercial Management Measures

The measures analyzed in this category include the following issues: LCS classification, shark quota administration, shark quota basis, and minimum size restrictions. The alternatives for these issues are described below.

A. LCS Classification

In the 1999 HMS FMP, NMFS finalized measures that split the LCS complex into two species groups: ridgeback and non-ridgeback LCS. These groups used sandbar and blacktip sharks as proxies for the ridgeback and non-ridgeback species, respectively, and, due to the presence of a ridge on the back of the shark, these groups could be easily distinguished from one another. Because of this split, NMFS was able to set different quota levels based on the results of the stock assessment and close the fisheries for these groups at different times. Due to delays caused by litigation, this measure was implemented for the first time in 2003 (67 FR 78990, December 27, 2002).

Since implementation, environmental groups and commercial fishermen raised multiple concerns regarding closing these groups at different times and the potential for increased bycatch due to the mixed nature of the fishery. Additionally, NMFS heard that, because sandbar and blacktip sharks had similar status designations as the complex in 1998 (i.e., overfished and overfishing occurring), using them as proxies for other species was acceptable in 1998; however, given their current status compared with the status of the LCS complex, NMFS should no longer use those species as proxies because it could lead to further overfishing on the LCS species that have not yet recovered under the management program.

After considering these comments, the LCS stock assessment, the peer reviews, and potential ecological, social, and economic impacts, NMFS is proposing to re-aggregate the LCS complex and establish one closure date. While re-aggregating the LCS complex could result in a lower quota level and, therefore, have additional economic impacts compared with some of the other alternatives considered, the preferred alternative reduces the burden of fishermen regarding sorting; maintains historical fishing practices and, therefore, reduces the chance of confusion over when the seasons are open or closed; and does not result in additional regulatory discards. Over time, as the LCS complex rebuilds, it is likely that quota levels based on the aggregate could be increased. Additionally, unlike some of the other classification methods, the aggregate classification fully considers the ability of all species, including the secondary species, to rebuild.

NMFS also considered alternatives that would keep the ridgeback/non-ridgeback LCS split and close the fishery at the same time; aggregate the LCS complex and close the fishery based on the landings of the most vulnerable species; and establish more species-specific quota levels. NMFS did not prefer the first two alternatives because while they could rebuild the fishery, they could also lead to a situation where one group's or one species' quota was continually not being landed. The species-specific alternative was not preferred because, while the resulting quotas could be higher thus mitigating economic and social impacts, due to the mixed nature of the fishery and problems regarding identification of sharks, this alternative would likely lead to increased discard and bycatch levels.

B. Shark Quota Administration

Since 1993, Atlantic shark fisheries have been managed via two semi-annual fishing seasons: January through June and July through December. Under this management measure, the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea close to shark fishing once the quota is reached. While this management measure provides a straightforward administration of the fishing seasons, it does not give NMFS the flexibility to manage the fisheries based on differences between regions or based on different pupping seasons for different species. In order to give NMFS that flexibility, NMFS proposes changing the semi-annual seasons to trimester seasons and establishing regional quotas.

The quota would be split equally between trimesters, and regional quotas would be based on historical fishing effort for each species group. However, in the future, NMFS could change the trimester and regional quotas in order to ensure that the fishery has the opportunity to harvest the annual quota and/or to protect pupping seasons, as necessary. Thus, in the future, if one region usually reaches or exceeds the quota from one trimester and rarely reaches the quota for another trimester, NMFS could adjust the quotas for each trimester so both quotas are reached. Additionally, if one region often exceeds its annual quota while another region does not, NMFS could decide to adjust the regional quotas to facilitate the harvest of the entire annual quota.

Similarly, if a particular species of shark needs additional protection during its pupping season and/or for its pupping grounds, NMFS could adjust trimester and regional quotas, as appropriate.

NMFS also considered quarterly seasons but did not prefer that alternative because under this alternative most pupping seasons would be split across two different fishing seasons. Thus, under the preferred trimester alternative, NMFS could, if needed, close one trimester and stop fishing during the majority of the pupping seasons. However, under a quarterly season, NMFS would need to close two quarterly seasons to stop fishing during the majority of pupping seasons.

C. Shark Quota Basis

As described in the 1993 Shark FMP, the 1993 LCS shark quota was established based on an estimate of MSY. The pelagic shark quota was based on average landing estimates because an estimate of MSY was not available. In 1997, based on a 1996 LCS stock assessment, NMFS, assuming that a 50–percent reduction in fishing mortality was approximately a 50–percent reduction in catch, reduced the quota accordingly. Also in 1997, NMFS established a SCS quota level based on estimates of MSY from the 1992 stock assessment. As described in the HMS FMP, NMFS established the 1999 LCS quotas, in part, by reducing the 1997 quotas levels by fishing mortality reductions recommended by the LCS stock assessment. Thus, in recent years, except for 2003, the commercial quotas for LCS and SCS have been based on older estimates of MSY as reduced several times by different recommended levels of fishing mortality reductions. This recent practice of setting quotas has led to confusion over where and when in the process discards and state landings after federal closures should be accounted.

To alleviate this confusion, NMFS is proposing a process that bases the starting level on the MSY level estimated in the stock assessment. That level is then reduced, as appropriate, to ensure that optimum yield (OY) can be harvested from the fishery. For stocks that are not overfished (e.g., SCS complex), OY is MSY reduced by 25 percent. For stocks that are overfished (e.g., LCS complex), MSY is reduced by the amount recommended in the stock assessment, tempered by other management measures that could decrease shark mortality. The commercial quota is the proportion of OY that is equal to the proportion of commercial landings in recent years by federal and state fishermen. The proportion of recreational landings and dead discards from OY is not included in the commercial quota. Thus, under this procedure, MSY, adjusted to ensure OY, is similar to a total allowable catch level and dead discards are accounted for before the commercial quota is established. Landings by state fishermen

after a Federal closure would be counted against the established quota. Under this process and using the LCS classification alternative described above, the proposed quota level for LCS is 1,109 metric tons (mt) dressed weight (dw) and for SCS is 454 mt dw.

The LCS quota levels under this process change, depending on which classification alternative is used. For example, if the ridgeback and non-ridgeback LCS split is maintained (the no action classification alternative), the LCS quota would be 1,109 mt dw for ridgeback LCS and 555 mt dw for non-ridgeback LCS. Total quota levels for LCS using the MSY basis ranged from 1,109 mt dw for the aggregate (the preferred classification alternative) to 3,200 mt dw for a more species-specific classification.

NMFS also considered basing the quota on recent landings adjusted to account for any recommendations by the stock assessments. The same method was used in the emergency rule that established quotas for the 2003 fishing year (67 FR 78990, December 27, 2002; extended by 68 FR 31987, May 29, 2003). Under this method, the quota would be considered the total allowable catch level, and both dead discards and state landings after a federal closure would be counted against the established quota. Total quota levels for LCS using the average landings method ranged from 1,016 mt dw for the aggregate (the preferred classification alternative) to 1,725 mt dw for a more species-specific classification. The quota level for SCS using the average landings method would be 300 mt dw.

D. Minimum Size Restrictions

In the HMS FMP, NMFS established a minimum size limit of 4.5 ft (137 cm) fork length (FL) for all ridgeback LCS. This size limit was based on the size of maturity of the sandbar shark and was finalized in order to reduce fishing mortality of the sandbar shark, particularly on juveniles, and to mitigate the possible quota reductions that would be necessary without that size limit. At the time, NMFS noted that this management measure, which was suspended due to litigation, was a type of moving time/area closure in that it could offer protection to small sharks in any area but that it could also result in dead discards of sandbar sharks and other species. A size limit was not placed on non-ridgeback LCS because, unlike sandbar sharks, blacktip sharks do not segregate based on size.

Given the results of the 2002 LCS stock assessment, particularly the fact that sandbar sharks are no longer overfished, NMFS concludes that, at this time, a minimum size would not significantly reduce mortality and would not contribute to rebuilding LCS. This is especially true given the possibility of increasing dead discards if the minimum size were kept in place and in consideration of the proposed time/area closure (described below) to protect juvenile sandbar and dusky sharks.

NMFS also considered other minimum sizes such as a 5–ft (152–cm) FL minimum size for all LCS; a 5–ft (152–cm) FL for ridgeback LCS and a 4.5–ft (137–cm) FL for non-ridgeback LCS; and regional minimum sizes. These alternatives were not preferred due to concerns regarding identification problems and concerns that they could increase dead discards, particularly for sharks such as blacktip sharks, that do not segregate by size.

3. Proposed Recreational Management Measures

The measures analyzed in this category include the following issues: retention limit, minimum size restrictions, and authorized gears. The alternatives for these issues are described below.

A. Retention Limit

In the 1999 HMS FMP, NMFS established a recreational retention limit of one shark of any species per vessel per trip with an additional allowance of one Atlantic sharpnose shark per person per trip. This retention limit was established in order to reduce the harvest of LCS by recreational fishermen by over 80 percent and prevent an increase in harvest of SCS. Additionally, establishing one limit for all species, except for Atlantic sharpnose, would simplify the regulations and improve compliance with the regulations by avoiding misidentification problems.

NMFS is proposing to maintain this retention limit and also allow for one bonnethead shark per person per trip. Based on the results of the SCS stock assessment, NMFS feels that additional mortality of bonnethead sharks should not result in an overfished condition. Additionally, bonnethead sharks are easily identified and are not likely to be confused with juvenile LCS. Allowing the retention of bonnethead sharks may also afford some economic and social benefits for tournament or charter/headboat operators. Due to apparent non-compliance issues, the limit of one shark per vessel per trip has not led to a reduction in the harvest of LCS by recreational fishermen. However, with the new permit requirement for recreational shark fishermen, NMFS believes that compliance and enforcement of the recreational retention and size limit should increase because the new permit requirement will allow NMFS to send regulatory information to a known universe of anglers and improve monitoring of catches. If compliance does increase, maintaining the one shark per vessel per trip in combination with the size limit (discussed below) should reduce fishing mortality to levels recommended in the 2002 LCS stock assessment and therefore would contribute to rebuilding LCS. If compliance does not increase, NMFS would consider other alternatives in the future.

NMFS also considered adding an allowance for one pelagic shark per vessel per trip; adding an allowance for additional sharks for vessels participating in registered HMS tournaments or for vessels that have been issued an HMS Charter/Headboat permit; requiring catch-and-release fishing for all sharks; and removing all retention limits for sharks. The first two alternatives were not preferred because NMFS does not have a current stock assessment for pelagic sharks and therefore could not analyze the impacts of increasing the retention of pelagic sharks. Additionally, the second alternative could increase the number of LCS harvested by anglers, contrary to the rebuilding plan for LCS. The third alternative was not preferred because NMFS believes that this alternative may have significant social and economic impacts on the recreational fishery and increasing compliance on the current regulations should contribute to rebuilding of LCS. However, if compliance does not improve, NMFS may need to implement this type of alternative. The last alternative was not preferred because that would increase the harvest of LCS, contrary to the rebuilding plan.

B. Minimum Size Restrictions

In the HMS FMP, NMFS established a recreational size of 4.5 ft (137 cm) FL for all sharks except Atlantic sharpnose. This size limit is based on the age of first maturity for sandbar sharks. While this size limit essentially created a catch-and-release fishery for SCS, it allows for landings of LCS and pelagic sharks while protecting juvenile LCS. NMFS established this size limit to protect juvenile LCS and to ensure rebuilding of LCS.

In this action, NMFS proposes to maintain the current size limit and extend the exception for Atlantic sharpnose sharks to bonnethead sharks. Keeping this size limit would afford some protection to juvenile LCS, as recommended by the 2002 LCS stock

assessment. Most bonnethead sharks caught do not reach the current size limit. Because bonnethead sharks are not experiencing overfishing, are not overfished, and are easily identified, NMFS does not believe that the removing the size limit for bonnethead sharks would cause them to be overfished or would impede the rebuilding of LCS.

As described above, NMFS believes that if compliance with the retention limit and the size limit increases, that these two management measures would meet the recreational fishing mortality reductions needed to rebuild LCS within the proposed timeframe. If compliance is not increased, NMFS may need to consider other alternatives.

Other alternatives considered for this proposed rule include: increasing the size limit to 5 ft(152.4 cm) fl; establishing different size limits for ridgeback LCS and non-ridgeback LCS and other species; establishing regional size limits for ridgeback and non-ridgeback LCS; and no size limit. These alternatives were not preferred due to concerns regarding misidentification of sharks.

C. Authorized Gears

The current regulations state that sharks can only be possessed if they were caught with handgear, longline, or gillnet. The regulations, however, do not specify which gears types are considered recreational and which gear types are commercial. This rule proposes to limit the allowable gears in the recreational shark fishery to rod and reel and handline, which are typically used for recreational fishing in HMS fisheries.

This change would make the allowable gears for the shark recreational fishery consistent with allowable gears for the Atlantic tunas and billfish fisheries and could aid in compliance with the retention and size limits. This limitation is not expected to have any ecological or economic impacts because the majority of, if not all, recreational fishermen already use these gears to fish for sharks. Additionally, these gear types are thought to have lower post-release mortality rates than some of the commercial gears. Thus, any sharks caught above the retention limit or under the minimum size would have a greater chance of surviving after release. Vessels that have been issued an HMS Charter/Headboat permit and a shark LAP, would be able to use commercial gear types as long as the vessel is not engaged in a for-hire recreational trip.

4. Proposed Bycatch Reduction Management Measures

The measures analyzed in this category include the following issues: gear restrictions and time/area closures. The alternatives for these issues are described below.

A. Gear Restrictions

Currently, NMFS has several management measures designed to reduce bycatch and bycatch mortality of sea turtles and marine mammals including net checks and a time/area closure in the gillnet fishery and posting handling and release guidelines in the bottom longline fishery. NMFS is proposing several additional gear restrictions in order to further reduce bycatch and bycatch mortality in shark fisheries.

i. Strikenet only

NMFS proposes to allow only strikenetting and prohibit drift gillnetting, in the shark gillnet fishery. While drift gillnets have been observed to catch several different species of sea turtles and marine mammals, strikenets have not. Additionally, over 90 percent of the catch of observed strikenets have been of the target shark species and only three teleost and ray species have been observed caught.

While switching to strikenet is expensive and may be cost-prohibitive for some vessels, NMFS knows that three of the six vessels that are currently in the shark gillnet fishery have used strikenet. Additionally, once a vessel is using strikenet, because it is so efficient at catching just the target species, compared to drift gillnet, reductions in sorting time and time spent fishing may reduce the overall cost of fishing.

Many shark gillnet fishermen participate in non-HMS drift gillnet fisheries during a LCS closure. Additionally, many gillnet fishermen in non-HMS drift gillnet fisheries catch sharks. In order to reduce any regulatory discards of incidental takes of sharks in non-HMS fisheries that result from the prohibition of drift gillnet, this proposed management measure would allow vessels issued a shark LAP to land a limited number of sharks (5 LCS and 16 SCS and pelagic sharks combined, per trip), consistent with the quota and closure regulations, if they are using drift gillnet in a non-HMS fishery.

ii. VMS

NMFS is also proposing a VMS requirement for vessels with gillnet and bottom longline gear on board. Under this management measure, owners with strikenet gear on board their vessel and a directed LAP for sharks would, consistent with the large whale take reduction plan, need to have a working VMS unit installed whenever the vessel is away from port from November 15 through March 31 (right whale calving season). Owners with bottom longline gear on board and a directed LAP for sharks would need to have a working VMS unit installed whenever the vessel is operating between 32° N. lat and 38° N. lat from January 1 through July 31 for bottom longline vessels (see proposed time/area closure discussion below).

To determine whether the entire HMS bottom longline fleet needed VMS installed, NMFS analyzed the fishing reports of current permit holders and found that approximately 80 percent of permit holders fished in an area near to the homeport provided on the application for their permits. The result was the same regardless of the vessel size. Thus, because bottom longline fishermen do not appear to fish in many different areas, NMFS concludes that only fishermen operating in an area and time around the proposed closed area would need VMS installed on their vessel. If additional closed areas are implemented or if the mobility of the fleet increases, NMFS may require VMS on more vessels.

VMS would aid NMFS in enforcing the regulations for time/area closures while allowing vessels to transit closed areas to reach homeports and could provide vessels some safety benefits. In the case of strikenet vessels, VMS may reduce the amount of observer coverage required in the fishery during that time period. In the case of bottom longline vessels, VMS could allow vessels with sharks on board to transit the closed area.

However, installing and maintaining VMS can be expensive. Based on the cost of VMS for pelagic longline fishermen, the initial installation of VMS could be approximately $1,900 to $3,250 and each unit could have an average maintenance cost of $500 per year. To mitigate these costs, NMFS hopes to develop a range of possible units and service providers similar to what was done for the pelagic longline fleet. If NMFS does not implement a time/area closure for bottom longline fishermen, bottom longline fishermen would not be required to have VMS on board their vessel.

iii. Other gear requirements

NMFS is also proposing several requirements for bottom longline fishermen that are similar to the requirements for pelagic longline fishermen. These include requiring the use of non-stainless steel corrodible hooks, the possession of release

equipment (line cutters, dipnets, and, when approved, dehooking devices), and a requirement that vessels move 1 nautical mile after an interaction with a marine mammal or a sea turtle. If used correctly, the hook and release equipment requirements could be effective in reducing post-release mortality of sea turtles, marine mammals, sharks, and other species. The cost for this equipment should be minimal and would be a one-time expense.

Moving after an interaction with a marine mammal or sea turtle could help prevent additional interactions with protected species. This management measure could result in additional cost per trip for fishermen including the cost of fuel; however, because few sea turtles or marine mammals have been observed caught in the bottom longline fishery, NMFS does not expect this requirement to affect more than a few trips for all vessels combined, each year.

In addition to the preferred alternatives outlined in sections i, ii, and iii, NMFS also considered (1) prohibiting the use of gillnet; (2) limiting the length of bottom longline gear; (3) limiting the soak time for bottom longline gear; (4) requiring the use of circle hooks; (5) requiring the retention of all sharks (i.e, no discards allowed); and (6) requiring recreational and commercial fishermen to attend bycatch reduction workshops. The first alternative would have larger social and economic impacts and would not be much more beneficial in reducing bycatch than the preferred alternative of strikenet only. The second and third alternatives could have positive ecological benefits. However, it would be difficult to ensure compliance and these alternatives could cause fishermen to fish in an unsafe manner. The fourth alternative might have positive ecological benefits but NMFS is not sure of what the impacts of circle hooks would be on the shark fishery or how many vessels already use circle hooks. While the fifth alternative would eliminate regulatory discards in the shark fishery, it could result in fishermen targeting species of sharks on the prohibited species list that cannot withstand fishing pressure. The sixth alternative could have ecological benefits but could also have economic impacts on fishermen.

B. Time/Area Closure

In the HMS FMP, NMFS did not finalize any time/area closures to protect juvenile sharks because most shark nursery or pupping grounds are within state waters (outside of NMFS' jurisdiction). Also, the State of North Carolina had recently closed state waters, which, at the time of developing the HMS FMP, was estimated to be sufficient to reduce juvenile sandbar and dusky shark mortality. In addition, the commercial minimum size finalized in the HMS FMP was considered to be as effective as a time/area closure.

In this action, NMFS proposes to close an area approximately 38,200 nmi2 off the coasts of Virginia, North Carolina, and South Carolina to vessels issued directed shark LAPs with bottom longline gear on board from January 1 through July 31. This area encompasses areas that have been identified in the HMS FMP and Amendment 1 as EFH for sandbar and dusky sharks and as an habitat area of particular concern for sandbar sharks.

Observer data from 1994 through 2003 for the bottom longline fishery indicates that 85 percent of all dusky sharks observed have been caught in this area and 92 percent of those were juvenile or neonate sharks. Additionally, 66 percent of all sandbar sharks observed have been caught in this area and 54 percent of those were juvenile or neonate sharks. In areas outside the proposed time/area closure, only 7 percent of sandbar sharks were juveniles, and no neonates were observed caught.

If effort is redistributed to other open areas in the Atlantic, analyses using the full observer database indicate that 79 percent fewer dusky sharks would be caught and 48 percent fewer sandbar sharks would be caught. In total, using all observer data from 1994 through 2003, the analyses indicate that 27 percent fewer LCS could be caught as a result of the closure. The estimated reductions change if a more recent timeframe (i.e., 2000 through 2003) is used. However, due to the uncertain regulations in the shark fishery from 1999 through the present as a result of ongoing litigation, NMFS believes that a longer time period is more indicative of what could happen as a result of the time/area closure. Given the historically short seasons, it is likely that shark fishermen would still catch the full quota even with the closed area. Thus, NMFS expects that the closure would protect dusky and juvenile sharks in the area but would not reduce the overall LCS landed.

This closure would likely have large negative economic and social impacts on the communities, fishermen, and dealers who live near the closed area. Fishermen who have traditionally fished the proposed closed area could go out of business or leave the fishery from January through July of each year, relocate to a different homeport during the closure, relocate permanently to another homeport, or continue to fish from their current homeport and transit the closed area. Currently, there are approximately 34 directed shark LAPs (14 percent of all directed shark LAPs) issued to fishermen in Virginia, North Carolina, and South Carolina. These 34 fishermen and their dealers would be directly affected by the closure. The fishermen who remain in the fishery would experience additional fishing costs including the cost of fuel, potentially longer trips, and potentially the need to find a new dealer. VMS might help minimize the economic and social impacts because fishermen could transit the area to offload fish. In other words, they could continue to use their traditional dealers and would not have to be away from their families or communities for as long as they would if they could not transit the closed area.

Fishermen and dealers outside the area could experience some benefits because more of the quota would be caught outside the closed area. However, there could also be some negative impacts if relocating fishermen add more pressure to a community that already has many fishermen.

NMFS also considered other closures including closing all EFH for neonate and juvenile sharks during pupping season and a closure for finetooth EFH in St. Andrews Bay area, Florida. The first alternative was not preferred because it could close large portions of the Economic Exclusive Zone (EEZ) for large periods of time and therefore could put many shark fishermen out of business. The second alternative was not preferred because finetooth EFH is located almost exclusively in state waters, over which NMFS would not have jurisdiction.

5. Other Proposed Management Measures

The measures analyzed in this category include the following issues: deepwater and other sharks, prohibited species, and exempted fishing permits (EFPs). The alternatives for these issues are described below.

A. Deepwater and Other Sharks

In the 1993 Shark FMP, NMFS decided that some species of sharks did not need management at that time but that data should be collected on these species. These species are currently in the group called ''Deepwater and Other Sharks'' and include species such as smooth dogfish, the catsharks, the lanternsharks, and the gulper sharks.

In the 1999 HMS FMP, NMFS added those species to the management unit with the express purpose of bringing them under the regulations to protect

them from finning. There are no other regulations on these species; fishermen do not currently need a permit to fish for them and are not limited in the number of fish that are taken. In most cases, the sharks in this management group are only taken as bycatch in some trawl fisheries. With the implementation of the Shark Finning Prohibition Act (67 FR 6194, February 11, 2002), these sharks are protected against finning. Given that the finning protection is no longer needed under the HMS FMP, NMFS is proposing to remove these species from the management unit. NMFS would continue to collect data for these species. NMFS does not expect any ecological, economic, or social impacts as a result of removing these species from the management unit.

B. Prohibited Species

In 1997, NMFS prohibited commercial and recreational

fishermen from possessing or landing five species of sharks: white, whale, basking, sandtiger, and bigeye sandtiger. These species were identified as highly susceptible to overexploitation and the prohibition was seen as a precautionary measure to ensure that directed fisheries on these species did not develop.

In the 1999 HMS FMP, NMFS prohibited 14 additional species including, but not limited to, dusky, night, Atlantic angel, Caribbean reef, longfin mako, and sevengill sharks. These species were added as a result of a change in policy from one where a species could be caught unless it was shown to be susceptible to overfishing to one where possession of certain species was allowed only if that species was known or expected to be able to withstand specified levels of fishing mortality. Thus, species that were rarely caught (e.g., Caribbean reef) or that ones where NMFS had little biological data available (i.e., Atlantic angel) were added to the list. Additionally, species such as dusky or night sharks, that were candidates for listing under the Endangered Species Act (ESA) or that had become depleted, were also added to the list.

The 1999 HMS FMP possession limits on prohibited species went into effect for recreational fishermen in 1999 and for commercial fishermen on June 21, 2000 (65 FR 38440). Since that time, NMFS has had numerous questions regarding why certain species are or are not on the list and requests to add or remove certain species to or from the prohibited species list. To address these requests, NMFS is proposing a mechanism where, through the regulatory framework adjustment process in the 1999 HMS FMP, species could be added to or removed from the prohibited species list.

Under the proposed rule, species could be added to the prohibited species list if at least two of the following criteria are met: (1) There is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries; (3) the species is not commonly encountered or observed caught as bycatch in fishing operations; or (4) the species is difficult to distinguish from other prohibited species (i.e., look-alike issue). Alternatively, a species could be removed from the prohibited species list if it meets only one of the criteria. Under the proposed alternative, NMFS does not expect any ecological, economic, or social impacts but the alternative could clarify the reason for species being added or removed and allow for more rapid and adaptive management of the species.

NMFS is not proposing to change the current prohibited species list at this time. However, NMFS would continue to issue EFPs or scientific research permits (SRPs), as appropriate, to fishermen or researchers who would like to collect information to indicate that a certain species of shark does or does not meet the above criteria. NMFS may remove some of the current species in the future using the proposed mechanism.

NMFS also considered alternatives for adding or removing certain species from the list including adding finetooth sharks, adding deepwater and other sharks, returning to the original five species, and removing dusky sharks. While these alternatives could have merit, NMFS believes it is not appropriate to change the list until a formal mechanism is approved.

C. EFPs

Under 50 CFR part 600, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. This exempted fishing may only be conducted if authorized by an EFP or SRP. In the 1999 HMS FMP, NMFS established a 60–mt whole weight (ww) shark public display quota for the purpose of collecting sharks for aquariums and other instances of public display. To collect sharks under this quota, vessel owners must be issued an EFP.

In this action, NMFS is proposing an administrative change where vessel owners who collect sharks or HMS for public display would be issued a ''public display permit'' instead of an EFP. At this time, the application and issuance procedures for a public display permit would be the same as those for an EFP. Sharks taken with a public display permit would still be counted against the 60 mt ww public display quota. The conditions of the permit would depend on the proposal submitted by the vessel owner. Changing the permit name should not have any ecological, economic, or social impacts but would clarify the purpose for which the permit was issued.

NMFS may consider other changes to the EFP/SRP/pubic display permitting system in the future. These changes could include a requirement for background checks regarding previous fisheries violations, a mandatory application form, or specific quotas for all HMS regarding public display or scientific research. NMFS welcomes any comments on these potential alternatives.

6. EFH Update

Under the Magnuson-Stevens Act, each FMP must describe EFH for the fishery, minimize to the extent practicable adverse effects on that EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. In the 1999 HMS FMP, NOAA Fisheries identified EFH for all actively managed species of sharks and two habitat areas of concern. Under the EFH regulations, NMFS must review EFH areas every five years and update EFH areas if there is a change of status or if new information becomes available. Because the new stock assessments resulted in a change of status for blacktip, sandbar, and finetooth sharks, NMFS must update EFH for those species. NMFS is also updating EFH for nurse and dusky sharks due to new information. NMFS will review EFH for all HMS over the next year.

In updating EFH identifications, NMFS is proposing two methods to identify EFH: (1) Identify EFH for each species and life stages as those habitats necessary for spawning, breeding, feeding, or growth to maturity and (2) increase or decrease existing EFH areas for individual species based on special needs. The first alternative would help to ensure identified EFH does not include marginal habitat. The second alternative would allow changes to the geographic scope of EFH based on the specific needs of the species. For example, an overfished species may

need a greater percentage of habitat identified as EFH to ensure its ability to rebuild compared to a species that is not overfished. NMFS also considered identifying EFH based on the entire geographic range of a species.

To update EFH identified for sandbar, blacktip, finetooth, nurse, and dusky sharks, NMFS considered updated fishery dependent and independent data for these species and considered new information regarding the biology of these species. NMFS also considered changes in fishing practices and areas since the 1999 HMS FMP. As a result, NMFS is proposing slight changes to the EFH identified for individual life stages and slight changes to the size ranges used to define each life stage. Maps and specific changes are fully described in the DEIS for Amendment 1.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an IRFA. The IRFA examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize any significant economic impacts on small entities. A summary of the information presented in the IRFA is below. Amendment 1 provides further discussion of the economic impacts of all the alternatives considered. NMFS does not believe that the proposed regulations would conflict with any relevant regulations, federal or otherwise (5 U.S.C. 603(b)(5)).

NMFS considers all commercial permit holders to be small entities according to the Small Business Administration's size standard for defining a small entity (5 U.S.C. 603(b)(3)). NMFS estimates that, as of October 2002, there are approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 commercial permit holders who are authorized to fish for and sell sharks commercially and who could be affected by the preferred alternatives outlined in the proposed rule. Only 120 of these vessels (approximately 20 percent of all permit holders) reported landings of shark during 2001. These 120 vessels could be affected by all proposed commercial requirements including managing LCS as one group, the proposed quota level, regional quotas, trimester quotas, and bycatch reduction methods. There are 34 permit holders (approximately 5 percent of all permit holders) located in Virginia, South Carolina and North Carolina. These permit holders could be directly affected by the proposed time/area closure in the mid-Atlantic Bight. Additionally, NMFS knows of fewer than 11 shark fishermen who have used drift gillnet gear at some point in the past and only six in recent years. These six vessels could be affected by the shark gillnet gear requirements of the proposed rule including prohibiting drift gillnet gear while allowing strikenet gear and requiring VMS during right whale calving season.

The proposed recreational requirements could also affect all recreational HMS permit holders including HMS Angling category permit holders (approximately 9,372 as of May 2003) and HMS Charter/Headboat permit holders (approximately 2,412 as of May 2003) because some of these permit holders target sharks. While there are a number of permit holders in these categories, these permit holders can target any HMS; few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the proposed regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS quota/ increase in commercial SCS quota, and time/area closure off North Carolina during the winter commercial fishery. However, the proposed rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, the economic impacts on these other sectors are discussed in Amendment 1 but not in the IRFA.

Some of the preferred alternatives in this document may result in additional reporting, recordkeeping, and compliance requirements (5 U.S.C. 603(b)(4)). The proposed rule includes a requirement that would require approximately six gillnet shark fishing vessels and approximately 10 directed category bottom longline shark fishing vessels (22 vessels have reported fishing in the area but 12 of those would likely already have VMS due to a requirement in the pelagic longline fishery) to install VMS units at an initial average cost of approximately $1,900–3,250 ($1,600–2,500 per unit and $300–750 installation fee), an average annual maintenance cost of approximately $500/year, and approximately $1.44/day for position reports. This alternative would likely increase costs but should not increase the needed skill level required for HMS fisheries.

Some of the proposed regulations such as defining the recreational authorized gear, prohibiting drift gillnet gear, implementing a time/area closure, installing VMS, obtaining gear to reduce bycatch or bycatch mortality, and applying for display permits could change compliance regarding the way and areas in which fishermen fish and set their gear and could require an increase in the skill level needed to participate in HMS fisheries. However, only the time/area closure, installing VMS, and the prohibition on drift gillnet gear would be likely to have significant negative economic impacts on some permit holders because these measures have definite expenditures or costs associated with them. Permit holders that are not directly affected by the proposed closure could experience some economic benefits as a result of the closure because more of the quota from January through July could be harvested in their area. Prohibiting drift gillnet gear would likely result in negative economic impacts for some of the six vessels actively fishing in the gillnet fishery, but overall would not directly affect the vast majority of the shark fishing fleet because these six vessels make up a small percentage of participants in the fishery. The other alternatives listed that could change compliance and/or reporting requirements would likely only have minor, if any, economic impacts on small entities.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, many of the proposed measures such as quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions would not be as effective with different compliance and reporting requirements. Thus, there are no alternatives available under the first and fourth categories listed above.

Alternatives under the second and third categories are discussed below.

The group of proposed measures for commercial minimum size and quotas was designed to minimize economic impacts incurred on fishermen while also, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, allowing healthy stocks to be managed at optimum yield, and allowing overfished stocks to rebuild. For example, eliminating the minimum size could increase profits for individual fishermen by reducing costs associated with the lengthening of trips (i.e., fuel, bait, and ice). Maintaining the minimum size could result in decreased profits due to the costs incurred taking longer trips and the time taken to sort through the catch. The proposed measure to aggregate LCS into one management group also simplifies compliance and reporting requirements under the proposed rule for small entities.

While NMFS considered other commercial quota-related alternatives that could, in combination with other alternatives, result in larger quotas and, therefore, fewer negative economic impacts or greater profits for individual fishermen. These alternatives included establishing the LCS quotas on a more species-specific basis, establishing the LCS and SCS quotas based on recent landings, maintaining the commercial minimum size, and not establishing regional quotas. These alternatives could also increase confusion for fishery participants by establishing several different closure dates and requiring greater skill at species identification. Additionally, these alternatives could result in delays in rebuilding LCS, contrary to the Magnuson-Stevens Act and the goals of the proposed rule.

NMFS is also proposing several management measures designed, consistent with the Magnuson-Stevens Act, to reduce, to the extent practicable, bycatch and bycatch mortality of HMS, protected species, and other fish in shark fisheries. Specifically, the alternative that prohibits drift gillnet gear and allows strikenet gear is likely to result in negative economic impacts for a limited number of small entities (i.e., three of the six vessels actively fishing in the shark gillnet fishery). Because of the one-time costs involved, switching to strikenet gear could put these fishermen out of business. However, NMFS knows that three of these vessels already use strikenet gear and strikenet gear has almost no bycatch while drift gillnet gear has interactions with many different species including sharks, fish, and sea turtles. Once the switch to strikenet is made, it is possible that profits could increase due to less time taken to sort the catch. No other measure, other than banning gillnet gear altogether, would be as effective at minimizing bycatch in the gillnet fishery. The no action alternative would minimize the economic impacts on individual fishermen but would not address bycatch issues in this fishery and therefore would not be consistent with the Magnuson-Stevens Act.

NMFS is proposing a time/area closure for sandbar and dusky shark nursery and pupping areas off North Carolina during the winter fishery. This alternative is designed to reduce bycatch of neonate and juvenile sandbar and dusky sharks and is likely to have significant impacts on 34 permit holders by closing large sections of coastal waters to shark fishing. This amounts to a direct economic impact on 14 percent of the directed shark fleet.

During 2001, only 13 permit holders with home ports located in South Carolina, North Carolina, and Virginia reported shark landings. These vessels reported gross revenues totaling $351,600 during that year. Economic analyses indicate that, if effort is not redistributed, the proposed time/area closure would result in a 4–percent reduction in total gross revenues for the fishery as a whole and in a 27–percent reduction of revenues for the small entities directly affected by the proposed closure. Fishermen would be directly impacted by a reduction in catch and income from areas that they have traditionally relied upon. Fishing practices and behavior of fishermen would also be affected by requiring fishermen to travel further offshore. Due to greater distances traveled, fishermen would spend more time at sea, and associated costs of food, fuel, and labor could increase and profits decrease. This could cause some fishermen to go out of business, move to new areas, or alter fishing patterns in other ways. This alternative could result in a change in the distribution of benefits and costs, with the financial costs of operating in the fishery increasing and benefits decreasing. However, the preferred alternative may result, once LCS rebuild, in slight benefits for fishery participants that are not directly affected by the closure and it minimizes the economic impacts compared to the other time/area closure alternatives considered. The no action alternative could also minimize the impacts but that alternative would not minimize bycatch and bycatch mortality, to the extent practicable, consistent with the Magnuson-Stevens Act, and would not protect juvenile sharks as recommended by the LCS stock assessment. Without the protection of juvenile sharks, rebuilding of LCS could be delayed, contrary to the provision of the Magnuson-Stevens Act.

NMFS does not know of any performance standards or design specifications that would help reduce bycatch of sandbar, dusky, juvenile, or other sharks in this fishery. However, NMFS could issue EFPs to fishermen or scientists who want to conduct research on this issue, similar to what is being done in the Northeast Distant Statistical Area with the pelagic longline fishery.

NMFS is also proposing to require vessels that use strikenet gear during right whale calving season, consistent with the large whale take reduction plan, or bottom longline gear in the south- and mid-Atlantic regions during the time/area closure to install VMS units. This would result in increased costs in the short-term. However, in the long-term, VMS could result in increased revenues by preventing more burdensome regulations and allowing more fishing time. Additionally, under this alternative, bottom longline vessels would be able to traverse closed area and gillnet vessels might require less observer coverage. The VMS units for the HMS pelagic longline fleet have an initial average cost of approximately $1,900–3,250 ($1,600–2,500 per unit and $300–750 installation fee), an average annual maintenance cost of approximately $500/year, and approximately $1.44/day for position reports.

An economic analyses of the impacts associated with VMS requirements indicate that only 6 percent of the fleet would be affected and that this would result in a 9–percent reduction in total gross revenues for fishery as a whole and a one time 31–percent reduction in total gross revenues for the vessels directly affected by this proposed requirement as a result of the purchase and installation of the units. To provide vessel owners with flexibility and help minimize costs, NMFS would type-approve several different VMS units and manufacturers for use, similar to the units approved for use in the pelagic longline fisheries. No VMS units have been type-approved yet specifically for use in the Atlantic shark fisheries as of this date. Based on the range of VMS units commercially available, NMFS expects any VMS unit type-approved for Atlantic shark fisheries to be similar or identical to those type-approved for the pelagic longline fisheries. Once the type-approval is complete, it is likely that this alternative will result in simplification of compliance and reporting requirements under the proposed rule for such small entities.

VMS would only be needed if there is a time/area closure in order to ensure adequate compliance with the closure. Not requiring VMS could result in inadequate enforcement of a time/area closure that minimizes bycatch and aids in rebuilding LCS. Thus, not requiring VMS is not consistent with the objectives of this proposed rule or the Magnuson-Stevens Act.

The other proposed bycatch measures would require vessels to buy release equipment or gear that would reduce post-release mortality. In addition, vessels would be required to move one nautical mile away immediately after interacting with a protected species. These measures would likely result in minor economic impacts to small entities, primarily because the cost associated with purchasing release equipment is minimal and is a one time cost. The requirement to move one nautical mile after an interaction with a marine mammal or sea turtle would likely increase fuel costs due to increased time transiting to another fishing area and increased time needed to fish if alternate fishing grounds are not as productive for target species. However, because few marine mammals or sea turtles have been observed caught, NMFS does not believe that this requirement would affect more than a few trips for all vessels combined, each year. Not requiring the release equipment or movement after a protected species interaction would not minimize bycatch and bycatch mortality as is required under the Magnuson-Stevens Act and the Endangered Species Act.

The proposed recreational retention limit (existing size and bag limit plus one bonnethead shark per person per trip with no minimum size) was also designed to minimize the economic impacts on recreational fishermen while also allowing for healthy stocks to be managed at optimum yield and overfished stocks to rebuild. Because this alternative relieves a previous restriction by allowing for more sharks to be harvested, this alternative may increase revenues to charter/headboats and other small entities who rely on the recreational shark fishery for income and could increase the willingness to pay and angler consumer surplus. While some other retention limit alternatives considered could further relieve restrictions to the recreational fishery and increase profitability of charter/headboat fishermen, those alternatives may not allow for overfished LCS to rebuild, as required under the Magnuson-Stevens Act.

In addition to the management measures described above, NMFS is also proposing several management measures that are likely to result in minor, if any, economic costs or benefits on small entities. Some of these measures may simplify existing compliance and reporting requirements. These measures are: limiting the authorized gear in the shark recreational fishery to handline and rod and reel (most fishermen already use these gear types); removing the species group ''deepwater and other sharks'' from the management unit and specifying these species for data collection purposes only; retaining the current 19 prohibited species and establishing criteria for the addition/removal of other species to/from the prohibited species group; updating identified EFH; and changing the name of a permit.

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The following requirements and estimated times per response have been submitted to OMB for approval: 4 hours for installation of a VMS, 5 minutes for completion of a VMS certification statement, 2 hours per year for VMS maintenance, and 0.3 seconds for an automated position report from a VMS.

This proposed rule also contains collection-of-information requirements that have already been approved by OMB under control number 0648–0471. These requirements and their estimated response times are 30 minutes for an application for a shark display permit, and 5 minutes for a catch report from a holder of a shark display permit.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the HMS Division and to OMB at the ADDRESSES above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

These proposed regulations are not expected to increase endangered species or marine mammal interaction rates. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NOAA Fisheries jurisdiction, and that other HMS fisheries would adversely affect, but were not likely to jeopardize, the continued existence of endangered and threatened marine mammal or sea turtle populations. On July 9, 2002 (67 FR 45393), NOAA Fisheries implemented the reasonable and prudent alternative required by the BiOp. Regarding the pelagic longline fishery, these proposed regulations would not have any additional impact on sea turtles as these actions would not change pelagic longline fishery regulations and therefore, would not change pelagic longline fishing effort or patterns. Regarding the shark bottom longline, gillnet, and recreational fisheries, these proposed regulations are expected to decrease bycatch and bycatch mortality of protected species by reducing fishing effort (e.g., reducing the LCS commercial quota, implementing a bottom longline time and area closure, expanding the restriction for gillnet vessels to strikenet at all times, requiring vessel monitoring systems (VMS) on gillnet and bottom longline vessels to enforce time and area closures, increasing outreach and enforcement of recreational retention and size limits, and requiring vessels with bottom longline gear to move 1 nmi after an interaction) and decreasing post-release mortality (requiring non-stainless steel hooks, dipnets, line cutters, and dehooking devices).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, section IX of the list of authorized fisheries and gears in paragraph (v) is revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * *	
IX. SECRETARY OF COMMERCE	
1. Atlantic Tunas, Swordfish, and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear
B. Pelagic longline fishery	B. Longline
C. Shark gillnet fishery	C. Strikenet
D. Shark bottom longline fishery	D. Longline
E. Shark handgear fishery	E. Rod and reel, handline, bandit gear
F. Shark recreational fishery	F. Rod and reel, handline
G. Tuna purse seine fishery	G. Purse seine
H. Tuna recreational fishery	H. Rod and reel, handline
I. Tuna handgear fishery	I. Rod and reel, harpoon, handline, bandit gear
J. Tuna harpoon fishery	J. Harpoon
2. Atlantic Billfish Fishery (FMP):	
Recreational fishery	Rod and reel
3. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine
* * * * *	

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.2, the definition of ''Management unit,'' under paragraph (5), is revised and new definitions for ''Display permit,'' ''Mid-Atlantic shark closed area,'' and ''Strikenet or to fish with strikenet gear'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Display permit means a permit issued in order to catch and land sharks for the purpose of public display pursuant to § 635.32.

* * * * *

Management unit means in this part:

* * * * *

(5) *For sharks,* means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, excluding those species listed in Table 2 of Appendix A.

* * * * *

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 37°30′ N. lat. near Wachapreague Inlet, Virginia, and proceeding due east to connect by straight lines the following coordinates in the order stated: 37°30′N. lat., 74°15′ W. long.; 33°00′ N. lat., 74°15′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°00′ N. lat. near Cape Romain, South Carolina.

* * * * *

Strikenet or to fish with strikenet gear means a gillnet with webbing of 5 inches or greater stretched mesh that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

* * * * *

5. In § 635.3, paragraph (d) is revised to read as follows:

§ 635.3 Relation to other laws.

* * * * *

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

* * * * *

6. In § 635.5, paragraph (e) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for offloading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

* * * * *

§ 635.16 [Reserved]

7. Remove and reserve § 635.16.

8. In § 635.20, paragraph (e) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached and be at least 54 inches (137 cm) FL, except that the minimum size limit does not apply for Atlantic sharpnose sharks or for bonnethead sharks.

* * * * *

9. In § 635.21, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added, and the newly redesignated paragraphs (e)(3)(i) through (e)(3)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) *Bottom longlines.* For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact of the mainline with the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption

that fish on board such a vessel were taken with bottom longline in the closed area.

(1) If bottom longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year.

(2) When a marine mammal or sea turtle is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must:

(i) Undertake the same bycatch mitigation measures as specified in paragraphs (c)(5)(i), (ii), and (iii)(B) of this section to release sea turtles, prohibited sharks, and other animals, as appropriate.

(ii) Possess and use a dehooking device that meets the minimum design standards. The dehooking device must be carried on board and must be used to remove the hook from any hooked sea turtle, prohibited shark, or other animal, as appropriate. NMFS will file with the Office of the **Federal Register** for publication the minimum design standards for approved dehooking devices. NMFS may also file with the Office of the **Federal Register** for publication any additions and/or amendments to the minimum design standards.

(e) * * *

(3) * * *

(i) No person issued a shark LAP under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel, handline, bandit gear, longline, or strikenet, except that such sharks taken incidentally while fishing with drift gillnet may be retained subject to restrictions specified in § 635.24 (a)(2). No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/headboat permit and a shark LAP may possess sharks taken with bandit gear, longline, or strikenet if the vessel is not engaged in a for-hire recreational fishing trip.

(ii) No person may fish for sharks with a strikenet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a strikenet, the strikenet must remain attached to at least one vessel at one end, except during net checks.

* * * * *

10. In § 635.22, paragraph (c) is revised as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

* * * * *

11. In § 635.24, paragraph (a)(2) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(2) Persons who own or operate a vessel that has been issued an incidental LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip. Persons aboard a vessel that has been issued a LAP for shark, that has a drift gillnet on board, and upon which non-HMS fish constitute not less than 75 percent by weight of the total fish on board or offloaded may retain, possess, or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

* * * * *

12. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks.* (1) Commercial quotas. The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks are split between three fishing seasons: January 1 through April 30, May 1 through August 30, and September 1 through December 31.

(ii) *Regions.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks are split between three regions. The regions are: Gulf of Mexico, South Atlantic, and North Atlantic. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c). The South Atlantic region includes all waters east of the Gulf of Mexico up to 36°30′ N. lat., including the waters surrounding the Caribbean. The North Atlantic region includes all waters north of 36°30′ N. lat.

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,109 mt dw (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section). This annual quota is split between the regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. At least 30 days prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal shark is 454 mt dw, (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section). This annual quota is split between the regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

(v) *Pelagic sharks.* The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks, 273 mt dw for blue sharks, and 488 mt dw for pelagic sharks other than porbeagle or blue sharks (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section).

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS will file any adjustment with the Office of the **Federal Register** for publication at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks taken and landed from state waters are counted against the fishery quota for the applicable region and time period.

(2) *Public display and research quota.* The annual quota for persons who collect sharks from any of the management groups under a display permit or EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against this quota.

* * * * *

13. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks.* (1) The commercial fishery for large coastal sharks will remain open in each region under the fishing seasons and regional quotas, as specified at § 635.27(b)(1). From the effective date and time of a season closure in a particular region until additional quota becomes available, the fishery for large coastal sharks in that particular region is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4 in that particular region.

(2) When the fishing season quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1) for a particular region is reached, or is projected to be reached, NMFS will file with the Office of the **Federal Register** for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery in that particular region for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4 in that particular region.

(3) When the fishery in a particular region for a shark species group is closed, a fishing vessel issued an Atlantic Sharks LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued an Atlantic Sharks LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

* * * * *

14. In § 635.32, paragraph (a) is revised; paragraph (c)(2) is removed; paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(2) and (c)(3), respectively; and paragraph (d) is added to read as follows:

§ 635.32 Specifically authorized activities.

(a) *General.* Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, or display permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization. Inspection requirements specified in § 635.5(e) of this part apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, or display permit.

* * * * *

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized public display fishing activities and to solicit public comment on anticipated public display fishing requests.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display and research quota specified in § 635.27(b)(2). A valid shark display permit must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A shark display permit is valid for the specific time, area, gear, and species specified on it.

(3) To be eligible for a shark display permit, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under

the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the display permit.

* * * * *

15. In § 635.34, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of Appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of Appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

* * * * *

16. In § 635.69, paragraphs (a), (e), and (h) are revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or strikenet gear is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board; whenever the vessel leaves port with bottom longline gear on board, is operating between 32° N. lat and 38° N. lat, and the mid-Atlantic shark closed area is closed to bottom longline fishing as specified in § 635.21(d)(1)(i); or whenever the vessel leaves port with a strikenet on board during the right whale calving season specified in the Large Whale Take Reduction Plan in § 229.32 (f) of this title. A vessel is considered to have pelagic longline gear on board for the purposes of this section, when gear as specified at § 635.21(c) is on board. A vessel is considered to have bottom longline gear on board for the purposes of this section, when gear as specified at § 635.21(d) is on board. A vessel is considered to have strikenet gear on board for the purposes of this section, when strikenet, as defined, is on board a vessel that has been issued a shark LAP.

* * * * *

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic or bottom longline gear or strikenet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a), must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

* * * * *

(h) As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or strikenet gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

* * * * *

17. In § 635.71, paragraphs (a)(1), (a)(2), (a)(7), (a)(14), (a)(17), (a)(18), (a)(23), (a)(26), (a)(34), (a)(36), and (a)(37); (b)(7) and (b)(8); (c)(1); and (d)(10), (d)(12), and (d)(13) are revised, and paragraphs (a)(39) and (a)(40) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.32.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, or display permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) or § 635.32.

* * * * *

(14) Fail to install, activate, repair, or replace a vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or strikenet gear on board the vessel as specified in § 635.69.

* * * * *

(17) Fish for Atlantic tunas, swordfish, or sharks with a gillnet or possess Atlantic tunas, swordfish, or sharks on board a vessel with a gillnet on board, as specified in § 635.21 (b), (e)(1), (e)(3), and (e)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21 (c)(3) or (d)(2).

* * * * *

(23) Fail to comply with the restrictions on use of a pelagic longline, bottom longline, or shark strikenet as specified in § 635.21 (c), (d), or (e)(3)(ii), (iii), and (iv).

* * * * *

(26) Violate the terms and conditions or any provision of an exempted fishing permit, scientific research permit, or display permit issued under the authority of § 635.32.

* * * * *

(34) Fail to disengage any hooked or entangled sea turtle with the least harm

possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(3).

* * * * *

(36) Fish with bottom or pelagic longline and shark strikenet gear for HMS without adhering to the gear operation and deployment restrictions required in § 635.21.

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark strikenet gear and sea turtle mortalities associated with pelagic longline gear as required by § 635.5.

* * * * *

(39) Deploy or fish with any fishing gear from a vessel with a bottom longline on board in any closed area during the time periods specified at § 635.21(d)(1).

(40) Deploy or fish with any fishing gear from a vessel with bottom longline gear on board without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(3).

(b) * * *

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(e)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(1)(vi)(B).

* * * * *

(c) * * *

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(e)(2).

* * * * *

(d) * * *

(10) Retain, possess, sell, or purchase a prohibited shark, as specified under § 635.22(c) and § 635.27 (b)(1) or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3) .

* * *

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21 (e)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21 (e)(3).

* * * * *

[FR Doc. 03–19522 Filed 7–31–03; 8:45 am]

BILLING CODE 3510–22–S